

1 **DAVID M. MICHAEL, SBN 74031**
2 **LAW OFFICES OF DAVID M. MICHAEL**
3 **101 California Street, Suite 2450**
4 **San Francisco, CA 94111**
5 **Telephone: (415) 946-8996**
6 **Facsimile: (877) 538-6220**
7 **E-mail: dmmp5@aol.com**

8 **Attorney for Claimant**
9 **FRANK JOSEPH ALIOTO**

10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA

No. C 07 5413 MMC

14 Plaintiff,

15 v.

**ANSWER OF CLAIMANT TO
VERIFIED COMPLAINT FOR
FORFEITURE;
DEMAND FOR TRIAL BY JURY**

16 APPROXIMATELY \$61,505.00
17 IN UNITED STATES CURRENCY,

18 Defendant.

19 _____/
20 FRANK JOSEPH ALIOTO,

21 Claimant.
22 _____/.

23 Claimant, FRANK JOSEPH ALIOTO, hereby answers the allegations in the
24 Government's Complaint for Forfeiture as follows:

25 1. In response to the allegations contained in paragraph 1 of the Complaint,
26 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
27 therein, and, on those grounds, denies each and every allegation contained therein.

28 2. In response to the allegations contained in paragraph 2 of the Complaint,
claimant lacks sufficient information to form a belief as to the truth of the allegations contained
therein, and, on those grounds, denies each and every allegation contained therein.

3. In response to the allegations contained in paragraph 3 of the Complaint,
claimant lacks sufficient information to form a belief as to the truth of the allegations contained

1 therein, and, on those grounds, denies each and every allegation contained therein.

2 4. In response to the allegations contained in paragraph 4 of the Complaint,
3 claimant admits the allegations contained therein

4 5. In response to the allegations contained in paragraph 5 of the Complaint,
5 claimant admits the allegations contained therein.

6 6. In response to the allegations contained in paragraph 6 of the Complaint,
7 claimant admits the allegations contained therein.

8 7. In response to the allegations contained in paragraph 7 of the Complaint,
9 claimant admits the allegations contained therein.

10 8. In response to the allegations contained in paragraph 8 of the Complaint,
11 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
12 therein, and, on those grounds, denies each and every allegation contained therein.

13 9. In response to the allegations contained in paragraph 9 of the Complaint,
14 claimant admits that reseervations were made for a flight on Delta Airlines Flight #611 from
15 Atlanta, Georgia to San Francisco. In response to the remaining allegations contained in
16 paragraph 9 of the Complaint, claimant lacks sufficient information to form a belief as to the truth
17 of the allegations contained therein, and, on those grounds, denies each and every allegation
18 contained therein.

19 10. In response to the allegations contained in paragraph 10 of the Complaint,
20 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
21 therein, and, on those grounds, denies each and every allegation contained therein.

22 11. In response to the allegations contained in paragraph 11 of the Complaint,
23 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
24 therein, and, on those grounds, denies each and every allegation contained therein.

25 12. In response to the allegations contained in paragraph 12 of the Complaint,
26 claimant admits that he deplaned from Delta Airlines Flight #611 on 30 May 2007 carrying his
27

1 own luggage. In response to the remaining allegations contained in paragraph 12 of the
2 Complaining, claimant lacks sufficient information to form a belief as to the truth of the allegations
3 contained therein, and, on those grounds, denies each and every allegation contained therein.

4 13. In response to the allegations contained in paragraph 13 of the complaint,
5 claimant admits that he was detained by government agents and questioned about his activities
6 without being admonished about his constitutional rights. Claimant further admits that he
7 provided them with a valid California driver's license which was taken from him. In response to
8 the remaining allegations contained in paragraph 13 of the Complaint, claimant lacks sufficient
9 information to form a belief as to the truth of the allegations contained therein, and, on those
10 grounds, denies each and every allegation contained therein.

11 14. In response to the allegations contained in paragraph 14 of the Complaint,
12 claimant admits that he was questioned by law enforcement agents while being detained. In
13 response to the remaining allegations contained in paragraph 14 of the Complaint, claimant lacks
14 sufficient information to form a belief as to the truth of the allegations contained therein, and, on
15 those grounds, denies each and every allegation contained therein.

16 15. In response to the allegations contained in paragraph 15 of the Complaint,
17 claimant admits that law enforcement agents demanded to search his luggage. Claimant also
18 admits that he refused to give consent to the search of his luggage and, further admits that he
19 refused to give consent to a dog sniff of his luggage and that he refused to agreed to continue his
20 detention so that a dog sniff could be made of his luggage. In response to the remaining
21 allegations contained in paragraph 15 of the Complaint, claimant lacks sufficient information to
22 form a belief as to the truth of the allegations contained therein, and, on those grounds, denies
23 each and every allegation contained therein.

24 16. In response to the allegations contained in paragraph 16 of the Complaint,
25 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
26 therein, and, on those grounds, denies each and every allegation contained therein.

1 17. In response to the allegations contained in paragraph 17 of the Complaint,
2 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
3 therein, and, on those grounds, denies each and every allegation contained therein.

4 18. In response to the allegations contained in paragraph 18 of the Complaint,
5 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
6 therein, and, on those grounds, denies each and every allegation contained therein.

7 19. In response to the allegations contained in paragraph 19 of the Complaint,
8 claimant denies that he gave consent to the search of his detained luggage. In response to the
9 remaining allegations contained in paragraph 19 of the Complaint, claimant lacks sufficient
10 information to form a belief as to the truth of the allegations contained therein, and, on those
11 grounds, denies each and every allegation contained therein.

12 20. In response to the allegations contained in paragraph 20 of the Complaint,
13 claimant admit that law enforcement agents sought to obtain information from him without
14 advising claimant regarding his constitutional Miranda rights. In response to the remaining
15 allegations contained in paragraph 20 of the Complaint, claimant lacks sufficient information to
16 form a belief as to the truth of the allegations contained therein, and, on those grounds, denies
17 each and every allegation contained therein.

18 21. In response to the allegations contained in paragraph 21 of the Complaint,
19 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
20 therein, and, on those grounds, denies each and every allegation contained therein.

21 22. In response to the allegations contained in paragraph 22 of the Complaint,
22 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
23 therein, and, on those grounds, denies each and every allegation contained therein.

24 23. In response to the allegations contained in paragraph 23 of the Complaint,
25 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
26 therein, and, on those grounds, denies each and every allegation contained therein.

1 24. In response to the allegations contained in paragraph 24 of the Complaint,
2 claimant admits that law enforcement agents told him that they were going to seize claimant's
3 property. In response to the remaining allegations contained in paragraph 24 of the Complaint,
4 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
5 therein, and, on those grounds, denies each and every allegation contained therein.

6 25. In response to the allegations contained in paragraph 25 of the Complaint,
7 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
8 therein, and, on those grounds, denies each and every allegation contained therein.

9 26. In response to the allegations contained in paragraph 26 of the Complaint,
10 claimant admits that his seized currency was in various denominations. In regards to the
11 remaining allegations contained in paragraph 26 of the Complaint, claimant lacks sufficient
12 information to form a belief as to the truth of the allegations contained therein, and, on those
13 grounds, denies each and every allegation contained therein.

14 27. In response to the allegations contained in paragraph 27 of the Complaint,
15 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
16 therein, and, on those grounds, denies each and every allegation contained therein.

17 28. In response to the allegations contained in paragraph 28 of the Complaint,
18 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
19 therein, and, on those grounds, denies each and every allegation contained therein.

20 29. In response to the allegations contained in paragraph 29 of the Complaint,
21 claimant admits that he was detained without his consent by law enforcement agents when he
22 deplaned from Delta Airlines flight #1084 from Atlanta on 16 August 2007. Claimant admits that
23 he had a sum of currency with him at that time. Claimant specifically denies that he ever gave
24 permission to law enforcement officers to search him or his property In regards to the remaining
25 allegations contained in paragraph 29 of the Complaint, claimant lacks sufficient information to
26 form a belief as to the truth of the allegations contained therein, and, on those grounds, denies

1 each and every allegation contained therein.

2 30. In response to the allegations contained in paragraph 30 of the Complaint,
3 claimant admits that, without any advisement of his constitutional Miranda rights, he responded to
4 his interrogation by law enforcement officers. Claimant specifically denies that he ever gave
5 permission to law enforcement officers to have any kind of search of him or his property
6 conducted by law enforcement officers or Maximus, an alleged narcotics sniffing dog. In regards
7 to the remaining allegations contained in paragraph 30, claimant lacks sufficient information to
8 form a belief as to the truth of the allegations contained therein, and, on those grounds, denies
9 each and every allegation contained therein.

10 31. In response to the allegations contained in paragraph 31 of the Complaint,
11 claimant admits that he was given a receipt for the currency seized from him or from his
12 possessions. In regards to the remaining allegations contained in paragraph 31, claimant lacks
13 sufficient information to form a belief as to the truth of the allegations contained therein, and, on
14 those grounds, denies each and every allegation contained therein.

15 32. In response to the allegations contained in paragraph 32 of the Complaint,
16 claimant denies each and every allegation contained therein.

17 33. In response to the allegations contained in paragraph 33 of the Complaint,
18 claimant lacks sufficient information to form a belief as to the truth of the allegations contained
19 therein, and, on those grounds, denies each and every allegation contained therein..

20 34. In response to the allegations contained in paragraph 34 of the Complaint,
21 claimant admits the allegation contained therein.

22 35. In response to the allegations contained in paragraph 35 of the Complaint,
23 claimant denies each and every allegation contained therein.

24 In addition, claimant raises the following numbered defenses to the government's
25 forfeiture complaint:

26 //

1 FIRST AFFIRMATIVE DEFENSE

2 As a separate and affirmative defense to the Complaint on file herein, claimant alleges
3 that said Complaint does not state facts sufficient to state a claim for forfeiture of defendant
4 property against claimant.

5 SECOND AFFIRMATIVE DEFENSE

6 As a further separate and affirmative defense to the Complaint on file herein, claimant
7 alleges that plaintiff lacked any probable cause for either the institution of this forfeiture suit, the
8 seizure of claimant's property, or the forfeiture of defendant property.

9 THIRD AFFIRMATIVE DEFENSE

10 As a further separate and affirmative defense to the Complaint on file herein, claimant
11 alleges that the seizure of the property claimed to be subject to forfeiture by plaintiff was made in
12 violation of claimant's Fourth Amendment rights and/or the Due Process Clause of the Fifth
13 Amendment of the United States Constitution. Consequently, all of the evidence seized and the
14 fruits thereof must be suppressed.

15 FOURTH AFFIRMATIVE DEFENSE

16 As a further separate and affirmative defense to the Complaint on file herein, claimant
17 alleges that the search of Compassionate Care pursuant to a warrant was made in violation of
18 claimant's Fourth Amendment rights and/or the Due Process Clause of the Fifth Amendment of
19 the United States Constitution. Consequently, all the evidence seized, and the fruits thereof, must
20 be suppressed.

21 FIFTH AFFIRMATIVE DEFENSE

22 As a further separate and affirmative defense to the Complaint on file herein, claimant
23 alleges that the seizure of the funds here, was made in violation of claimant's Fourth Amendment
24 rights and/or the Due Process Clause of the Fifth Amendment of the United States Constitution.
25 Consequently, all the evidence seized, and the fruits thereof, must be suppressed.

26 SIXTH AFFIRMATIVE DEFENSE

1 As a further separate and affirmative defense to the Complaint on file herein, claimant
2 alleges that, pursuant to 21 USC § 881(a)(6), he has an innocent ownership interest in the
3 defendant property such that any act or omission which would have subjected said property to
4 forfeiture, was committed or omitted without claimant's knowledge or consent.

5 SEVENTH AFFIRMATIVE DEFENSE

6 As a further separate and affirmative defense to the Complaint on file herein, claimant
7 alleges that 21 U.S.C. § 881 and 18 U.S.C. § 981, and/or their various subsection, are
8 unconstitutional and unenforceable, in that they constitutes a denial of claimant's due process and
9 equal protection rights under the United States Constitution.

10 EIGHTH AFFIRMATIVE DEFENSE

11 As a further separate and affirmative defense to the Complaint on file herein, claimant
12 alleges that this court lacks jurisdiction over the subject matter of plaintiff's complaint.

13 NINTH AFFIRMATIVE DEFENSE

14 As a further separate and affirmative defense to the Complaint on file herein, claimant
15 alleges that this court lack jurisdiction over the defendant property.

16 TENTH AFFIRMATIVE DEFENSE

17 As a further separate and affirmative defense to the Complaint on file herein, claimant
18 alleges that the government's forfeiture claim is void and unenforceable as violative of the United
19 States Constitution, in that it would result in the taking of property without due process of law,
20 and without just compensation, in violation of the Fifth Amendment to the United States
21 Constitution.

22 ELEVENTH AFFIRMATIVE DEFENSE

23 As a further separate and affirmative defense to the Complaint on file herein, claimant
24 alleges that the government's forfeiture claim is void and unenforceable as violative of the United
25 States Constitution, in that the forfeiture of claimant's interest in the subject property would
26 amount to a cruel and unusual punishment, in violation of the Eighth Amendment to the United
27

1 States Constitution.

2 TWELFTH AFFIRMATIVE DEFENSE

3 As a further separate and affirmative defense to the Complaint on file herein, claimant
4 alleges that the government's forfeiture claim is void and unenforceable as violative of the United
5 States Constitution, in that the forfeiture of claimant's interest in the subject property would
6 amount to an excessive fine in violation of the Eighth Amendment to the United States
7 Constitution.

8 THIRTEENTH AFFIRMATIVE DEFENSE

9 As a further separate and affirmative defense to the Complaint on file herein, claimant
10 alleges that the government's forfeiture claim is void and unenforceable as violative of the United
11 States Constitution, in that the forfeiture of claimant's interest in the subject property is in
12 violation of the Double Jeopardy Clause of the Fifth Amendment to the United States
13 Constitution.

14 FOURTEENTH AFFIRMATIVE DEFENSE

15 As a further separate and affirmative defense to the Complaint on file herein,
16 claimant alleges that the government's forfeiture claim is void and unenforceable as violative of
17 the United States Constitution, in that claimants were denied notice and opportunity to be heard
18 prior to the seizure of defendant property or the initiation of this forfeiture action, in violation of
19 the Due Process Clause of the Fifth Amendment to the United States Constitution.

20 FIFTEENTH AFFIRMATIVE DEFENSE

21 As a further separate and affirmative defense to the Complaint on file herein, claimant
22 alleges that the arrest, or other restraint, of the property claimed to be subject to forfeiture was
23 made in violation of the Fourth Amendment to the Constitution and the Right to Financial Privacy
24 Act.

25 SIXTEENTH AFFIRMATIVE DEFENSE

26 As a further separate and affirmative defense to the Complaint on file herein, claimant
27

1 alleges that the arrest, other restraint, of the property claimed to be subject to forfeiture was made
2 in violation of Article I, Section 1 and Section 8, Clause 18, of the United States Constitution,
3 being founded upon an unlawful delegation of legislative power.

4 SEVENTEENTH AFFIRMATIVE DEFENSE

5 As a further separate and affirmative defense to the Complaint on file herein, claimant
6 alleges that said Complaint is barred by the applicable statute of limitations.

7 PLEASE TAKE NOTICE THAT CLAIMANT DEMANDS TRIAL BY JURY OF
8 THE ISSUES AND DEFENSES RAISED BY HIS CLAIM AND ANSWER.

9 WHEREFORE, claimant FRANK JOSEPH ALIOTO, prays that this Court will:

- 10 1. Dismiss plaintiff's Complaint and enter a judgment on behalf of claimant.
- 11 2. Order that all property seized, and the fruits thereof, be suppressed as
12 evidence in this case, and order that all items seized from claimant's possession, actual or
13 constructive, be suppressed as evidence in this and any other proceeding.
- 14 3. Order that claimant has an innocent ownership interest in the defendant
15 property
- 16 4. Order that all statements made by claimant be suppressed as evidence in this
17 case.
- 18 5. Order that all of defendant property be released and surrendered to claimant
19 forthwith.
- 20 6. Deny issuance of a certificate of probable cause pursuant to 28 U.S.C. § 2465
21 and award costs and attorney fees to claimant.
- 22 7. Provide such other and further relief as this court deems proper and just.

23 //

24 //

25 //

26 //

DATED: 22 January 2008

Respectfully submitted,

S/DAVID M. MICHAEL
DAVID M. MICHAEL
Attorney for Claimant
FRANK JOSEPH ALIOTO

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that, on 22 January 2008, he caused to be electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Susan B. Gray CSB 100374
Office of the U.S. Attorney
450 Golden Gate Avenue
San Francisco CA 94102
sgray2@usdoj.gov

S/DAVID M. MICHAEL
DAVID M. MICHAEL